



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 10, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0166

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	6.220 - Voluntary Contacts, Terry Stops, & Definitions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 3	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 4	6.150 - Advising Persons of Miranda and the Right to Counsel 6.150-POL 1 Advising Miranda Rights 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights	Not Sustained - Unfounded
Imposed Discipline		
Oral Reprimand		

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 (NE#1) was unprofessional, conducted an unlawful detention, used excessive force, and failed to issue *Miranda* warnings during Community Member #1's (CM#1) arrest.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified that Witness Officer #1 (WO#1) responded to the underlying incident as a backing officer. While driving to the incident, OPA observed a cell phone affixed to WO#1's dashboard displaying a baseball game. OPA sent WO#1's potential SPD Policy 13.030-POL-5 (Officers Are Responsible for the Safe Operation of Their Police Vehicle) violation to his chain of command for Supervisor Action.

On September 11, 2023, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.



SUMMARY OF INVESTIGATION:

OPA opened an investigation concerning this incident. During its investigation, OPA reviewed the OPA complaints, computer-aided dispatch (CAD) call reports, incident report, and body-worn video (BWV). OPA also interviewed two complainants and NE#1.

a. OPA Complaints and Complainant Interviews

OPA received three separate complaints concerning this incident. Each complaint raised the same allegations.

The complaints alleged that, on April 9, 2023, NE#1¹ “grabbed” and “dragged” a Black man, CM#1. The complaints noted that NE#1 told CM#1 he would not be arrested, but when additional officers arrived, CM#1 was handcuffed and arrested. The complaints also noted that officers had “friendly banter” with a “person in civilian clothes”—Community Member #2 (CM#2)—who was present during the encounter. Generally, the complaints questioned whether NE#1 unlawfully detained CM#1, used excessive force, issued *Miranda* warnings, and met the department’s professionalism standard.

OPA attempted to interview the complainants but only successfully interviewed Complainant #1 and Complainant #2. OPA’s calls to the third complainant were unsuccessful, and there was no option to leave a voicemail.

Complainant #1’s statement was generally consistent with her complaint. Complainant #1 alleged that NE#1 “twisted” CM#1’s arm, pulled his wrist forcefully, and “dragged” CM#1 to a police vehicle. Specifically, Complainant #1 said CM#1 was on his feet, but NE#1 forcefully escorted him. Complainant #1 also said officers acted like they found it “kind of funny,” as if it were a social gathering.

Complainant #2’s statement was also generally consistent with her complaint. Complainant #2 described NE#1 as “pulling and gripping” CM#1’s wrist for no apparent reason. Complainant #2 also noted officers appearing “casual” about the incident, which she found “unsettling” and “cocky.”

b. CAD Call Reports and Incident Report

There were two CAD call reports associated with this incident. The first call occurred at 12:43 p.m., indicating that a “repeat shoplifter” and trespasser stole merchandise from Amazon Fresh. It also noted that the suspect was “known to carry a metal pole or a rock,” but there was no reported weapon on the day of the incident. NE#1 responded with CM#2, a “Ride Along” observer. See SPD Policy 16.030 – Ride Along Program (“The Ride Along Program allows an observer to accompany an officer during an assigned shift. . . [Allowing] a firsthand observation of some daily police operations.”). NE#1 and CM#2 arrived around 1:00 p.m. CM#1 was identified as the suspect by name and birthdate

¹ The complaints did not identify NE#1 by name but provided physical descriptions. Two of the three complaints listed WO#1 as the involved employee. BWV established that NE#1 was the arresting officer. NE#1 also matched the physical descriptions provided by the Complainants. BWV also showed WO#1—a backing officer—provided his name and badge number when asked by community members.



and described as a Black man in his thirties, six feet two inches tall, thin, with a red bandana covering his face, a green “puffer” vest, a red jacket, and blue jeans. NE#1 cleared the first call at 1:08 p.m. as “Assistance Rendered,” noting that CM#1 left on a bus before NE#1 arrived.

The second CAD call report noted that NE#1 saw CM#1 at a bus stop about a mile from Amazon Fresh at 1:14 p.m. CAD call remarks indicated that CM#1 was arrested and transported to the East precinct and then to King County Jail.

NE#1 wrote a single incident report covering both CAD reports. NE#1 wrote that he responded to the Amazon Fresh store, but the identified suspect had left before NE#1 arrived. NE#1 wrote that a loss prevention officer (LPO) told him that CM#1 was a known shoplifter who was previously trespassed from the store. The LPO said she saw CM#1 steal about \$28 worth of merchandise. The LPO described CM#1, which matched the description noted in CAD. NE#1 wrote that he later saw CM#1 at a nearby bus stop, appearing to smoke a “fentanyl pill on a piece of foil.” NE#1 wrote that he approached CM#1, who began walking away. NE#1 wrote he identified himself as “police” and told CM#1 to stop, but CM#1 ignored the command. NE#1 stated he grabbed CM#1’s arm and escorted him to a police vehicle. NE#1 wrote that CM#1 provided his name, which matched the suspect’s name provided by the LPO. NE#1 wrote that he arrested CM#1 for Second-Degree Burglary and issued him *Miranda* warnings. NE#1 wrote that CM#1 initially denied shoplifting but later asked, “How else am I supposed to get money for blues?”² NE#1 did not find stolen merchandise on CM#1 but assumed CM#1 “traded the stolen goods for the fentanyl.”

c. Body-Worn Videos (BWV)

BWV was consistent with NE#1’s incident report.

BWV—starting at 12:56 p.m.—showed NE#1 and CM#2 arrive at Amazon Fresh and speak with the LPO, who described the alleged shoplifter. The LPO noted that CM#1 usually carried a large rock and sometimes a pole. The LPO believed that CM#1 left the area on a bus.

Thereafter, BWV—starting at 1:14 PM—showed NE#1 detaining and arresting CM#1. It depicted the following:

NE#1 was in a police vehicle with CM#2. NE#1 radioed that he would be stopping a suspect. NE#1 exited and approached CM#1, yelling, “Hey! Green jacket! Stop! Stop! I’m telling you to stop!” CM#1 was a tall, thin, Black male, around thirty years old, wearing blue jeans, a red shirt, a red jacket, a green puffer vest, and a red bandana around his neck. CM#1 walked away while looking back at NE#1. NE#1 told CM#1 to “put the drugs down.” CM#1 responded, “In my pocket?” NE#1 replied, “No, like, come on. You can’t have fucking drugs.” CM#1 said, “I’ll put it in my pocket,” and kept walking. NE#1 repeatedly told CM#1 to stop.

NE#1 told CM#1, “You are detained right now. I don’t want to fucking fight with you.” NE#1 grabbed CM#1’s arm, one hand on CM#1’s bicep and the other holding CM#1’s wrist. CM#1 protested, “Why? No. Let me go.” NE#1 radioed for backing officers to “Step it up” and said he was “hands-on” with the suspect.

² “Blues” is slang for counterfeit fentanyl-laced pills that resemble prescription oxycodone. See Shawn Hayes, *The Fatal “Blues,”* Law Enforcement Bulletin, June 6, 2023, available at <https://leb.fbi.gov/articles/featured-articles/the-fatal-blues>.



NE#1 told CM#1, "Take a breath, okay? You're not in any trouble for the drugs. Here's what's going to happen. We're going to hang out. I'm going to get your name, okay? I'm going to run your name, and then you're going to be free to go. All right? That's all. Okay?" While NE#1 spoke with CM#1, CM#1 put his left hand inside his left pocket. NE#1 grabbed CM#1's wrists and ordered, "Just drop that shit on the ground. Don't dig in your fucking pocket. Don't do that." CM#1 ignored the order. NE#1 said, "Look, I'm going to be clear with you, all right? You're not under arrest, all right? I'm going to put you in handcuffs."

NE#1 escorted CM#1 to a police vehicle. NE#1 told CM#1, "You're not going to jail, but you are acting a little squirrely, man." NE#1 told CM#1 to sit on the front bumper. CM#1 complied and provided his name, the same name the LPO provided. NE#1 and CM#1 discussed CM#1's fentanyl use. NE#1 told CM#1 King County's overdose statistics and told CM#1 he did not want him to be an overdose victim.

When the backing officers arrived, NE#1 patted CM#1's outer garments and found a rock. NE#1 told the other officers that CM#1 was being arrested for trespassing and shoplifting. NE#1 and another officer handcuffed CM#1. CM#1 briefly refused to position his arm behind his back. NE#1 stated, "Don't fight us. Don't fight us. Don't fight us. Don't tense. Hey, relax. Don't fucking fight."

CM#1 denied shoplifting at Amazon Fresh and said, "You said I wasn't going to get arrested." NE#1 responded, "For the drugs, but you're arrested for stealing from the fucking Amazon Fresh." A backing officer read CM#1 *Miranda* warnings. Another search revealed several rocks on CM#1's person.

d. OPA Interview – NE#1

OPA interviewed NE#1. NE#1 said he worked at SPD for about three years and was assigned to the East precinct.

NE#1's account was consistent with his BWV.

NE#1 noted that he was accompanied by a "Ride Along," a gym acquaintance. NE#1 acknowledged using profanity while speaking with CM#1 but said that language was common at their gym. NE#1 admitted his language likely fell outside SPD standards, but he used it to emphasize commands. NE#1 said supervisors had previously counseled him regarding profanity, and he was working on addressing it.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The complainants alleged NE#1 was unprofessional.

SPD must employees "strive to be professional." SPD Policy 5.001-POL-10. Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. *Id.*



Additionally, employees must “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” *Id.* “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language derogatory, contemptuous, or disrespectful toward any person.” *Id.*

NE#1’s language and demeanor fell short of SPD’s professionalism policy. OPA observed that NE#1 used a version of “fuck” or “fucking” twenty-five times throughout the incident. NE#1 used profanity while speaking with CM#1 and CM#2, which NE#1 acknowledged failed to meet SPD standards.

Separately, with CM#1 in the backseat, NE#1 casually discussed CM#1’s arrest with CM#2. NE#1 told CM#2 that he “was a few seconds from, fucking, wrapping [CM#1] up.” NE#1 and CM#1 laughed, and NE#1 said, “That’s gnarly. Trashy cops. It’s all good.” As one of the complainants noted, NE#1 also told someone at a bus stop over the cruiser’s public address (PA) system, “Stop smoking fentanyl in public. You. Blue hoodie, black shorts over to your left. Stop smoking fentanyl.” NE#1 then told CM#2, “He’s just going to smoke it right now,” followed by NE#1 and CM#2 laughing and joking about it.

Under any circumstances when an officer is on duty and in uniform, NE#1’s language and demeanor would have violated SPD standards. However, NE#1’s behavior here was particularly troubling since it occurred with CM#1 and CM#2 present. Also, as NE#1 told OPA, superiors counseled NE#1 about his language and demeanor before this incident.³

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops, & Definitions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

The complainants alleged NE#1 stopped CM#1 without justification.

Terry stops are seizures that must be based on reasonable suspicion to be lawful. SPD Policy 6.220-POL-1. Terry stops are “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion to investigate possible criminal activity.” Id. Reasonable suspicion means “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging, or is about to engage in criminal conduct.” Id. Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” Id. While “Information learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” Id.

CM#1 was subjected to a lawful *Terry stop*. An LPO gave NE#1 a precise description of CM#1, accused him of shoplifting, and noted that he left by bus. About fifteen minutes later, NE#1 saw CM#1—matching the description—at a bus stop about a mile from the store. That constituted reasonable suspicion for CM#1’s detention.

³ This includes at least one supervisor action before this incident concerning professionalism (2022OPA-0246).



Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #3

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged NE#1 used excessive force on CM#1

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officer when the force is applied and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” under tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

NE#1 used lawful and proper *de minimis* force on CM#1 during this incident. NE#1 had reasonable suspicion to stop CM#1. When NE#1 approached CM#1 and told him to stop, CM#1 ignored NE#1’s lawful orders and attempted to keep walking. During their interaction, CM#1 repeatedly ignored NE#1’s instructions by, among other things, reaching into and digging around in his pockets. NE#1 used *de minimis* force to control CM#1’s hands and guide CM#1 to his vehicle. NE#1 then had CM#1 sit on his front bumper, unhandcuffed, while awaiting backing officers. This relatively low level of force was objectively reasonable, necessary, and proportional to control CM#1 during the lawful stop.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #4

6.150 - Advising Persons of Miranda and the Right to Counsel 6.150-POL 1 Advising Miranda Rights 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights

The Complainant alleged that NE#1 did not read CM#1 *Miranda* warnings.

Officers must provide full *Miranda* rights to “all persons taken into custody, regardless of interview, as soon as practical.” SPD Policy 6.150-POL-1(1).

BWV showed that an officer read CM#1 *Miranda* warnings following his arrest.

OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**